

The Comparative Study of the Criminal Policies of the Islamic Emirate and the Republic Governments of Afghanistan Regarding the Cultivation and Trafficking of Hashish and Opium

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Abstract: Since Afghanistan is an Islamic country, the cultivation, production, use, and trafficking of narcotic drugs are considered unlawful under Islamic law. Therefore, each Afghan government must adopt clear legal measures to implement this principle. This study comparatively analyzes the criminal policies of the Islamic Emirate and the Islamic Republic of Afghanistan regarding the prevention of narcotic drug cultivation, production, usage, and trafficking.

The research employs both library and analytical methods, drawing information from legal documents, books, and reliable international journals. The findings reveal that the two governments have adopted different approaches: The Islamic Republic enacted a separate law on combating narcotics, specifying all types of narcotics, related crimes, offenders, punishments, confiscated drugs, and responsible authorities. In contrast, the Islamic Emirate implemented a unified manual outlining narcotics prevention measures and associated punishments.

This comparative analysis highlights the effectiveness and differences of criminal policies in curbing the cultivation and smuggling of opium and hashish, offering insights into strategies that have proven more successful.

Keywords: Hashish, Opium, Criminal Policy, Comparative Study

Introduction

Afghanistan has long been recognized as one of the world's leading producers of narcotic substances, particularly hashish and opium. The cultivation, production, trafficking, and consumption of these substances pose significant social, economic, and health challenges, affecting both local communities and the international community at large. In response to this ongoing issue, successive Afghan governments have developed and implemented criminal policies aimed at controlling and preventing the spread of narcotic drugs. As an Islamic country, Afghanistan's legal and policy frameworks are influenced by both religious principles and modern statutory laws. The Islamic legal tradition considers the use and trade of narcotic substances unlawful, which requires the government to adopt clear legal measures to enforce this prohibition. In line with this principle, the criminal policies of the Islamic Republic of Afghanistan (IRA) and the Islamic Emirate of Afghanistan (IEA) have been designed to regulate, prevent, and punish the cultivation, trafficking, and use of narcotics.

During the period of the Islamic Republic, the government enacted specific laws, including the 2003 Constitution, the Penal Code, and the Law on Combating Narcotic Drugs (2017), to provide a comprehensive legal framework for the prevention and control of narcotics. These instruments established special institutions, prosecution offices, and courts dedicated to anti-narcotics enforcement, defined the types of narcotic substances and related crimes, and prescribed penalties for offenders. Additionally, mechanisms were created to confiscate, manage, and dispose of narcotic drugs, as well as to support farmers in transitioning to alternative crops.

In contrast, the Islamic Emirate has adopted a unified procedural decree that consolidates the rules and punishments related to narcotics, including cultivation, trafficking, importation, and consumption. This decree specifies punishments based on the quantity of narcotics involved and provides procedures for the destruction of seized substances, reflecting a distinct approach compared to the earlier legal framework of the Republic.

This study aims to comparatively analyze the criminal policies of the Islamic Republic and the Islamic Emirate regarding the prevention of hashish and opium cultivation and trafficking. It examines the similarities and differences in their approaches, the effectiveness of the implemented measures, and the overall impact on controlling the production and distribution of narcotic substances in Afghanistan. By doing so, the research

contributes to understanding the practical implications of policy design in the Afghan context and offers insights into strategies for improving narcotics control.

1. General Concepts Related to the Topic

In the topic of the criminal policies of the Islamic Emirate and the Republic regarding the prevention of hashish and opium cultivation and trafficking in Afghanistan, the following concepts are present, which we will briefly explain.

1.1 Narcotic Substances

The term "narcotic" originates from the root word "narc," which means to numb or paralyze. Narcotic substances are defined as any raw or synthetic materials that, once absorbed into the body, alter or affect one or more functions of a living organism. These substances can induce relaxation, numbness, or activity in the body and are generally referred to as narcotic substances (Singh & Devi, 2023).

Globally, all narcotic substances, particularly hashish and opium, pose a significant threat to human life and health in both wealthy and impoverished countries, with similar impacts in each context (Singer, 2008). Some of these substances occur naturally, while others are synthetically produced. Among these, opium and hashish are considered natural narcotic substances.

Hashish is a widely distributed plant found in various regions. Human use of hashish dates back over 5,000 years, when people first began extracting hashish resin from the plant's fibers (Port Royal). The cultivation of hashish originated in Western Asian countries, particularly Egypt, and later spread to Europe. By 1606, hemp cultivation had also become widespread in North America and the coastal areas of Canada. Over time, however, the cultivation of hashish was prohibited under federal laws in the United States (Pertwee, 2014).

The cannabis plant is the source of hashish. Currently, cannabis is recognized as one of the leading psychoactive plants (Rubin, 2011). Cannabis is classified among hallucinogens as a psychoactive substance and is considered a stimulant plant. This classification indicates that it contains toxic substances that can profoundly affect brain function (Sawicka et al., 2020).

1.2 Trafficking

Trafficking is a harmful activity in which individuals illegally and secretly transport goods from one region to another. This act, whether on a domestic or international scale, poses a significant threat, especially when it involves the illegal transfer of narcotic substances (Raustiala, 1999).

1.3 Cultivation of Narcotic Substances

In Afghanistan, the cultivation of narcotic substances, particularly hashish and opium, is carried out by farmers, primarily due to the presence of economic challenges (Armstead, (1992).

1.4 Criminal Policy

Criminal policy refers to the measures taken by the government to prevent the occurrence of crimes, reform offenders, and ensure the enforcement of relevant laws (Walsh & Beaver, 2009).

2. The Criminal Policy of the Islamic Republic of Afghanistan on the Prevention of Hashish and Opium Cultivation and Trafficking

In this section of the research, the focus is on how the laws enacted by the government of the Islamic Republic of Afghanistan addressed the prevention of narcotic substances, particularly the cultivation and trafficking of hashish and opium. Among the key legal instruments from that period are the 2003 Constitution, the Penal Code, and the Law on Combatting Narcotic Drugs, which are considered most relevant to the discussion.

2.1 The 2003 Constitution on the Prevention of Hashish and Opium

Every state, in order to organize and regulate its general affairs, formulates fundamental rules. The collection of these fundamental rules is referred to as the Constitution of the country (Maddex, 2014). The primary objective of enacting constitutional laws is to safeguard the fundamental interests of society. One of the greatest societal interests is the protection of human intellect (Aleinikoff, 1986). In order to achieve this objective, a constitution must contain provisions dedicated to preserving the human mind. Accordingly, the Constitution of Afghanistan, alongside addressing other societal interests, also included specific provisions aimed at safeguarding human intellect, as will be clarified below. Article 7 The state is obligated to take necessary measures to ensure Afghanistan's independence, national sovereignty, territorial integrity, state

authority, the observance of the Constitution, the protection of human rights, the prevention of narcotic drugs, the elimination of corruption, the implementation of administrative reforms, and the enforcement of the principles of the religion of Islam.

If we examine the above article, it clearly obligates the state to take action in the prevention of narcotic drugs. Since hashish and opium constitute a major part of narcotics, it can therefore be concluded that, according to the Constitution, the cultivation and trafficking of such substances are considered prohibited acts, and the state is duty-bound to prevent them.

In the Constitution, only Article 7 explicitly addresses the obligation of the state to prevent narcotic drugs. However, under Article 52 of the same Constitution, the state is also responsible for providing healthcare services to all citizens of the country. Considering the harmful effects of narcotic substances (such as hashish and opium) on the human health system, it can be inferred that, in addition to the explicit provision in Article 7, the Constitution implicitly obligates the state to prevent the cultivation and trafficking of these substances in order to fulfill its broader duty of protecting public health.

2.2 The Law on Combating Narcotic Drugs (2017)

This law was enacted on 26 November 2017, with serial number 1284. It consists of 7 chapters and 77 articles. The purpose of the law was to prevent the production, trafficking, and use of opium, hashish (cannabis), and other types of narcotics in Afghanistan. The law established a High Commission for Counter-Narcotics, which included both military and civilian institutions. These entities were given mandatory roles in combating narcotics. The most important responsibility of the commission was to develop a national strategy for the prevention and control of narcotics. In this law, the classification of narcotics for the purposes of combating them was done in alignment with international conventions. (Article 11). In the aforementioned law, after the identification of narcotics and the establishment of counter-narcotics commissions, the second chapter discusses the duties and powers of the police in relation to criminals involved in narcotics offenses. This chapter outlines the responsibilities of the police, which include detecting crimes related to narcotics, arresting suspects, confiscating tools used in the production, transfer, and use of narcotics, and dismantling narcotics factories. Additionally, the police are mandated to hand over drug traffickers, along with confiscated documents, to the prosecutor's office within 72 hours. In order for the Law on Combating Narcotics to be effectively implemented, according to Article 14 of the law, a special unit must be established within the Ministry of Interior for narcotics control, with a series of assigned tasks. These tasks include eradicating the cultivation of cannabis and opium poppies, as well as, after identifying places where narcotics are used, sealing and locking those places. According to the Law on Combating Narcotics, the National Security Directorate, Ministry of Defense, Customs, Border Police, and other national police forces are mandated to be responsible for the prevention and eradication of narcotics (Article 15). In accordance with the criminal policy of the Islamic Republic of Afghanistan for combating narcotics (particularly hashish and opium), a special prosecution office was established under the title *Prosecution Office for Combating Intoxicants*. This office was exclusively authorized to investigate and prosecute crimes related to the trafficking of narcotic substances and associated offenses (Article 17). Whenever the courts issue a ruling related to crimes associated with narcotic substances, the decision shall be forwarded by the Prosecution Office for Combating Intoxicants to the Ministry of Counter-Narcotics for implementation (Article 17). According to the criminal policy of the Islamic Republic of Afghanistan in combating narcotic drugs (such as hashish and opium), a special court was established to address crimes related to narcotic substances (Article 17). If an individual commits other crimes in addition to narcotics-related offenses, then along with the special primary court the appellate courts of the provinces and the Supreme Court are also authorized to address and adjudicate such offenses (Article 17). According to the Law on Counter Narcotics, whenever narcotic drugs are seized by the responsible authorities, a photograph must be taken of them, their weight must be determined, and a sample must be analyzed in a laboratory to identify its quality so that both the quantity and sample are preserved for the court process. These seized substances may then, with the approval of the United Nations' International Narcotics Control Board (INCB), be converted into medical drugs or sold to a licensed country under the supervision of the commission mentioned in paragraph 5 of Article 32 of this law. In the absence of INCB approval for their sale or use in pharmaceutical production, the prosecutor shall request the competent court to issue an order for their destruction. (Article 19). The responsible authorities for combating narcotic drugs must publicly destroy all types of drug cultivation, related facilities, and storage sites. (Article 21). The counter-narcotics police may search houses, residences, and conduct body searches of individuals for the purpose of locating narcotic drugs, provided that body searches must be carried out by a person of the same gender (Article 23). If necessary, the competent authorities may install concealed electronic devices in residences in order to detect narcotic drugs. (Article 24). According to the provisions of the Law on the Prevention of Money Laundering and Proceeds Derived from Narcotic Drugs, the movable and immovable assets and financial and bank

accounts of suspects, accused, and convicted individuals related to narcotics must be frozen and seized. If it is proven by the court that these assets are linked to drug-related crimes, they shall be confiscated by court order (Articles 31 and 32). According to this law, farmers cultivating cannabis and opium are subject to punishment. If a person grows cannabis or opium on their own land or leases it to someone else for this purpose, they are punishable. If the cultivated land is less than half a *beswa* (a traditional unit of land measurement), the punishment is six months of imprisonment. Moreover, as the size of the cultivated land increases, the severity of the punishment also increases (Article 34). If a person traffics in opium, the penalties are based on the quantity of the substances involved. For example, if a person is caught trafficking less than 10 grams of opium, the punishment ranges from six months to nine months (Article 38).

If a person traffics in cannabis, and the quantity of cannabis is less than 25 grams, the trafficker will be penalized with imprisonment ranging from six months to nine months (Article 39). If someone sells cannabis or opium to addicts, this act is considered a crime under the mentioned law. Along with the penalties prescribed for drug traffickers, if a person sells cannabis or opium for the first time, their punishment will include imprisonment of moderate duration in addition to the primary penalty. However, if the person repeatedly sells cannabis or opium, their punishment will include long-term imprisonment in addition to the primary penalty (Article 48). The leader of the trafficking networks of cannabis and opium, whether leading from within the country or abroad, is subject to the most severe punishment, which could include long-term imprisonment or even the death penalty (Article 56). According to this law, the penalties for individuals convicted of crimes related to cannabis and opium do not apply to situations involving the suspension of sentence execution, conditional release, or reduced penalties (Article 60). To ensure the prevention of cannabis and opium cultivation and to encourage farmers to abandon such cultivation, the Ministry of Agriculture is obligated to provide alternative crops, storage facilities for products, farming resources, and financial and technical assistance to farmers. Additionally, both domestic and international market access should be facilitated for these farmers (Article 67). After the confiscation of proceeds derived from narcotics, they must be deposited into the state budget through a specific bank account (Article 73).

3. The Prevention of Cannabis and Opium Poppy Cultivation and Trafficking According to the Criminal Policy of the Islamic Emirate of Afghanistan

According to the decree of the Islamic Emirate of Afghanistan, dated 9/6/1402 (Solar Calendar) and the 13th number, which includes 11 topics and 32 articles, punishments have been established for the cultivation, trafficking, and sale of cannabis and opium poppy. Based on this decree, if an individual cultivates cannabis or opium poppy on less than half a jirib (unit of land it $\text{sam}2000\text{m}^2$) of land, their punishment is six months of imprisonment. However, if the cultivation area is exactly half a jirib, the individual faces a one-month punishment. If the area cultivated exceeds half a jirib, the punishment for the cultivator is one year. In all these cases, the penalties for the landowner, partner, or renter of the land are the same (Articles 1, 2). When an individual imports cannabis and opium, if the quantity of these narcotic substances is one kilogram or less, the punishment for the importer is imprisonment. If the quantity of the imported cannabis is between one kilogram and five kilograms, the importer faces a punishment of two years in prison. In this way, the maximum punishment for the importer is set at seven years of imprisonment (Articles 4-7). If an individual sells cannabis, opium, or other narcotic substances, and the quantity is five grams or less, the punishment is one year of imprisonment. In the same way, if the quantity of cannabis or opium increases up to 250 grams, the punishment can increase to a maximum of seven years of imprisonment (Articles 8-11). For individuals who are addicted to cannabis, opium, or other narcotic substances, and considering their state of addiction, the punishment is imprisonment ranging from one month to six months (Article 12). If a cannabis or opium factory is located inside a house, the military personnel of the Islamic Emirate, in the presence of the village imam, will enter the house during the day and destroy the factory (Article 15). When a person imports medicines that are mixed with opium, if the quantity of the medicine is less than ten kilograms, the penalty for the importer is three months of imprisonment. Similarly, for every ten kilograms added, the imprisonment period increases by three months, with the maximum penalty being three years of imprisonment (Articles 30-32). It is worth noting that according to the procedures of the Islamic Emirate of Afghanistan, any cannabis, opium, or other narcotic substances seized from the importer should be burned in front of the designated committee.

Material and Method

Study Design:

This research is conducted within the framework of comparative legal analysis, focusing on the criminal policies of the Islamic Republic and the Islamic Emirate of Afghanistan regarding the prevention of

hashish and opium cultivation and trafficking. Both library (desk-based) methods and analytical methods were employed.

Data Sources:

Information for this study was collected from the following sources:

Legal documents: Including the 2003 Constitution, Penal Code, the Law on Combating Narcotic Drugs (2017), and the Decree of the Islamic Emirate of Afghanistan on narcotics.

Books and scholarly texts: Providing general concepts on narcotic substances, trafficking, and criminal policies.

Peer-reviewed international journals: Offering global perspectives on drug control, trafficking, and policy effectiveness.

Methodology:

Library Method: Systematic review of primary and secondary sources, including laws, books, and scholarly articles.

Analytical Method: Critical analysis of the criminal policies of both governments based on legal frameworks, types of crimes, punishments, and responsible authorities. The analysis focuses on the practical implementation and effectiveness of the policies.

Inclusion Criteria:

Sources directly related to the cultivation, trafficking, prevention, and legal regulations of hashish and opium in Afghanistan.

Legal texts and scholarly sources published between 2002 and 2025.

Data Analysis:

Collected information was categorized based on legal provisions, types of crimes, penalties, and responsible institutions.

Analytical assessment was performed to identify the similarities and differences between the criminal policies of the two governments.

Ethical Considerations:

All sources used are publicly available and properly cited. No confidential or restricted information was used.

Results

Based on the analysis of the criminal policies of the Islamic Republic of Afghanistan (IRA) and the Islamic Emirate of Afghanistan (IEA) regarding the prevention of hashish and opium cultivation and trafficking, the following results can be drawn:

1. Legal Framework and Enforcement:

- Under the IRA, the Constitution (2003), Penal Code, and the Law on Combating Narcotic Drugs provided a comprehensive legal framework to prevent the cultivation, trafficking, and use of narcotics.
- Specialized institutions, such as the High Commission for Counter-Narcotics, a dedicated prosecution office, and a specialized court, were established to ensure strict enforcement of anti-narcotics laws.
- The IEA, through its decree (dated 9/6/1402, Solar Calendar), also set strict punishments for the cultivation, trafficking, and sale of cannabis and opium poppy, ranging from imprisonment to long-term imprisonment depending on the quantity and type of offense.

2. Penalties for Offenses:

- Both governments have applied a **quantity-based penalty system**. For example, under the IEA, importing small amounts of narcotics carries a short-term imprisonment, while larger quantities can lead to up to seven years of imprisonment.
- Cultivation penalties are proportional to land size, with punishments ranging from one month to one year, depending on the extent of cultivation.
- Repeat offenders and leaders of trafficking networks face the most severe penalties, including long-term imprisonment or even the death penalty.

3. Preventive Measures and Farmer Support:

- Under the IRA, the Ministry of Agriculture is mandated to provide alternative crops, financial and technical assistance, and market access to encourage farmers to abandon narcotic cultivation.
- The IEA enforces immediate destruction of narcotic cultivation sites, including factories within residences, often in the presence of local authorities.

4. Procedural and Operational Results:

- Confiscated narcotics are processed following strict procedures: documented, analyzed, and either destroyed or converted into licensed medical products under international supervision (IRA).
- Law enforcement agencies, including police and border authorities, are actively involved in the eradication of narcotics, conducting searches, investigations, and arrests (IRA and IEA).

5. Health and Social Implications:

- Both regimes recognize the adverse effects of hashish and opium on public health and social well-being. The constitutional mandate to protect human intellect and health indirectly supports the prohibition of narcotic cultivation and trafficking.

6. Overall Findings:

- Despite differences in governance and legal frameworks, both the IRA and the IEA have implemented strict measures to prevent narcotics cultivation and trafficking.
- The combination of legal enforcement, punitive measures, and preventive strategies reflects a consistent approach to safeguarding public health, social stability, and national security from the threat of narcotics.

Discussion

The comparative analysis of the criminal policies of the Islamic Republic of Afghanistan (IRA) and the Islamic Emirate of Afghanistan (IEA) regarding the prevention of hashish and opium cultivation and trafficking reveals both similarities and differences that highlight the complexity of narcotics control in Afghanistan.

First, the legal frameworks of both regimes demonstrate a strong commitment to combating narcotics. The IRA relied on a codified structure, supported by the Constitution, Penal Code, and the Law on Combating Narcotic Drugs, along with specialized institutions and judicial mechanisms. By contrast, the IEA adopts a decree-based approach rooted in Islamic jurisprudence, which prescribes strict punishments for offenders. Although their sources of legitimacy differ constitutional law versus Sharia decree both systems ultimately converge in adopting stringent measures.

Second, the penalties for narcotics-related crimes under both governments emphasize proportionality based on quantity and type of offense. This reflects an effort to balance deterrence with fairness. However, the IEA's framework tends to adopt harsher penalties, including potential capital punishment, which may increase deterrence but also raises questions regarding compliance with international human rights standards.

Third, the preventive measures highlight a significant divergence. The IRA focused on offering farmers alternatives through agricultural support, financial assistance, and market integration. This development-oriented strategy sought to address the socio-economic roots of narcotics cultivation. The IEA, however, has relied more heavily on immediate eradication and destruction measures, which, while effective in the short term, may lack sustainability if not accompanied by alternative livelihood opportunities for farmers.

Fourth, in terms of procedural and operational practices, both governments emphasize the importance of law enforcement, confiscation, and destruction of narcotics. Yet, the IRA's mechanism of documenting and channeling confiscated drugs into medical use under international supervision reflects a more institutionalized and internationally integrated approach. The IEA's measures, while strict, are more domestically oriented and less connected to international regulatory mechanisms.

Fifth, the recognition of the health and social harms of narcotics is a point of convergence. Both regimes acknowledge that narcotics undermine public health, social stability, and national security. However, the level of integration between criminal justice measures and public health interventions remains limited.

Overall, the findings suggest that while both governments have pursued strict anti-narcotics strategies, the IRA adopted a more institutional and developmental approach, whereas the IEA emphasizes strict enforcement and deterrence. The challenge for Afghanistan lies in finding a balance between punitive measures and socio-economic reforms, ensuring that eradication does not exacerbate poverty and instability, but instead contributes to sustainable development and long-term stability.

Conclusion

The comparative study of the criminal policies of the Islamic Republic of Afghanistan (IRA) and the Islamic Emirate of Afghanistan (IEA) on the prevention of hashish and opium cultivation and trafficking demonstrates that both governments have adopted strict legal, judicial, and enforcement mechanisms to combat narcotics. Despite differences in governance and sources of legitimacy constitutional law under the IRA and Sharia-based decrees under the IEA both regimes converge on the recognition that narcotics pose serious threats to public health, social order, and national security.

The IRA established a codified and institutionalized framework, complemented by specialized commissions, prosecution offices, and courts, while also emphasizing preventive strategies such as farmer support and the promotion of alternative livelihoods. In contrast, the IEA relies on decree-based enforcement rooted in Islamic jurisprudence, with harsher penalties and immediate eradication measures. While this strict approach may enhance deterrence, it risks long-term sustainability without sufficient socio-economic alternatives for affected communities.

A key point of convergence is the shared acknowledgment of the harmful effects of narcotics on health and society, although the integration of criminal justice measures with public health interventions remains limited in both systems.

Overall, this study concludes that the success of narcotics control in Afghanistan requires a balanced approach that combines strict legal enforcement with sustainable socio-economic reforms. Without addressing the root causes of cultivation, such as poverty and lack of livelihood opportunities, punitive measures alone are unlikely to achieve lasting results. Effective narcotics policy in Afghanistan must therefore integrate legal, social, and developmental strategies to ensure both immediate control and long-term stability.

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Data Availability Statement:

The data that support the findings of this study are available from the corresponding author upon reasonable request.

Conflicts of Interest:

The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

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